IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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Crl. Rev. No. 732 of 2005 (O&M)
Date of decision:- 3.2.2011

Gurdip Singh & Ors. **... Petitioners**

Versus

State of Punjab **... Respondent**

CORAM:- HON'BLE MR. JUSTICE GURDEV SINGH

Present:- Mr. Kuldeep Sanwal, Advocate, for the petitioners.
Ms. Gagan Mohini, AAG, Punjab.
Mr. Jagjit Singh, Advocate, for the complainant.

Gurdev Singh, J (oral)

The petitioners/accused- Gurdip Singh, Harjit Singh and Babla Singh, along with Labh Kaur and Gamdur Singh, were tried for the offences punishable under Sections 323, 324, 326/149, 147 and 148 IPC. The present petitioners/accused were convicted by JMIC Samana for the offences under Sections 324 and 326 read with Section 34 IPC whereas Labh Kaur and Gamdur Singh were acquitted by giving the benefit of doubt. These accused were sentenced as under:-

Name of accused	Offence under Section	Sentence imposed upon the accused
Gurdeep Singh	326 IPC	R.I., for two years and fine of ₹100/- and in default of payment of fine to undergo further R.I., for three months
Harjit Singh & Babla Singh	326/34 IPC	R.I., for two years each and fine of ₹100/-, each and in default of payment of fine to undergo further R.I for three months

Name of accused	Offence under Section	Sentence imposed upon the accused
Gurdeep Singh	324 IPC	R.I., for one year
Babla Singh and Harjit Singh	324/34 IPC	R.I., for one year, each
Babla Singh	324 IPC	R.I., for one year
Harjit Singh and Gurdeep Sigh	324/34 IPC	R.I for one year each
Harjit Singh	324 IPC	R.I for one year
Babla singh and Gurdeep Singh	324/34 IPC	R.I for one year each

Against that conviction and sentence the accused preferred an appeal, which was decided by Additional Sessions Judge, Patiala vide judgement dated 22.3.2005, who, while maintaining the conviction and sentence so imposed upon the accused under Section 324/34 IPC, reduced, the sentence under Section 326/34 IPC by six months.

It was on the statement of Mishra Singh-complainant/injured Ex.P8 that FIR No.101 dated 28.12.1994 Ex.PC was registered in Police Station Chagga and the criminal machinery was set in motion. The complainant came out with the version that the litigation had been going on between his family on the one side and Gurdip Singh and Gamdoor Singh accused on the other side and they were instigated by Labh Kaur to attack them. On 27.12.1994 at about 9 AM, Labh Kaur and others had collected in order to fill up foundations in his land. On coming to know about that fact and to prevent them from doing so, he along with his brother Jora Singh went to that place and were followed by Tara Singh. At that time Babla was armed with spade (kahi), Harjit Singh was armed with Takua and Gurdeep Singh was armed with Gandasi. When he prevented them from digging the foundations Gurdeep Singh gave a blow with his gandasa on the backside of

the finger adjoining the little finger of his left hand. The second blow was given by that accused on the backside of that very finger. Babla gave a blow with his spade in the middle of his forehead. The second blow was given by that accused on the right side of his forehead and the third blow was given above his left ear. Labh Kaur caught hold him from his long hair and gave fist blows. Another blow was given by Babla with the help of spade which he tried to weild with the help of his right hand and in the process received injury on that hand. When he raised an alarm Harjit Singh gave a blow with his Takua on the forehead of his brother Jora Singh and the second blow was given by that accused on the right side of the forehead. Labh Kaur picked up a brick bat and hurled the same towards Jora Singh, which hit him on the right side of his face. Gamdoor Singh, who was standing on the road, raised a lalkara exhorting these accused not to spare them as they had been harassed a lot at their hands. His brother Tara Singh and one AmrikSingh came to the spot, who intervened to save them from the accused and all of them left the spot with their respective weapons. He himself and Jora Singh were removed to Civil Hospital where they were medically examined by Dr. Satish Kumar PW1, who found 7 injuries on his person and three injuries on the person of Jora Singh, which were detailed in the medico legal reports Ex.PA and PB, respectively. Written intimation was sent to the police station about the admission of these persons in the hospital and on the receipt thereof Sewa Singh ASI PW3 came to that place and gave an application Ex.PC/1 to enquire about the fitness of Mishra Singh injured to make the statement. The doctor declared him fit to make statement and thereafter the above said statement Ex.PC was recorded. The

ASI went to the place of occurrence and after inspecting the same prepared the rough site plan Ex.PD with correct marginal reports. He recorded the statements of the other witnesses and after the completion of the investigation, the challan was put in before the SDJM.

I have heard learned counsel for both the sides.

It has been submitted by learned counsel for the accused that injury No.1 on the person of Mishra, which was declared grievous, has not been attributed by any of the accused by that injured and other witness and that itself is a ground for acquitting them for the offence under Section 326 IPC. He also submitted that there is delay of 28 hours in lodging the FIR which is fatal to the prosecution. There was long standing enmity between the parties and that was the motive on the part of the complainant to falsely implicate the accused. He also submitted that in case this Court is not inclined to acquit the accused, then, it is a fit case where they are entitled to be released on probation of good conducts, as they are not previous convicts and the grievous injury was found on the non-vital part of the body.

On the other hand, it has been submitted by learned State counsel that there is categorical statement of Mishra Singh injured and the other witnesses that Gurdip Singh had given a blow with his gandasa on the finger adjoining the little finger of the left hand and, therefore, it cannot be held that injury No.1, which was found to be grievous, has not been attributed to the any of the accused. The delay, if any, in lodging the FIR is not fatal to the prosecution as the complainant made a statement regarding this occurrence at the first available opportunity and the delay, if any, stands explained. The offence under Section 326 IPC is punishable with the

imprisonment for life and they were not below 21 years of age on the date of the comission of offence. As such they are not entitled to the benefit of probation.

It was categorically stated by Mishra Singh-complainant PW2 that Gurdip Singh gave a blow with his gandasa on the back side of the finger adjoining the little finger of his left hand and the second blow with the gandasa was also given at the same place. Dr. Satish Kumar Arora, PW1, who medically examined this injured described the said injuries as under:-

1. Incised wound 4cm X 1cm into bone cut on the dorsal aspect of left little finger distal to interphalamgeal joint, extending to the latral and madial sides and to the palamer aspect, underlying phalangeal bone cut compleately and distal portion of the finger attached with a skin tag., freshly bleadingly.
2. Incised wound 1.5cm X .4cm into .3cm on the dorsal aspect left ring finger, oblique in its middle parts freshly bleedingly,
3. Incised wound 1cm X .3cm in to .3cm on the ring finger 1cm distral to injury No.2, oblique freshly bleedingly.

There may be some minor contradiction in the ocular and medical evidence, but it cannot be inferred therefrom that injury No.1 found on the person of this injured and which was declared as grievous, has not been attributed to any of the accused. The same was specifically attributed to Gurdip Singh-accused. The statement of the complainant regarding causing of these injuries by Gurdip Singh has been duly coroborated by the other eye-witness; namely, Jora Singh PW4.

According to the complainant this occurrence took place on

27.12.1994 at about 9 AM. After the occurrence he and other injured were medically examined on the same day at 11.20AM and 12.20 Noon. Bahadur Sing SI had approached the doctor on that very day at 4.00PM for recording the statement of the complainant, but he was found unfit to make the statement being under the effect of the sedatives . Similarly Jora Singh injured was also found to be unfit. They were declared fit to make statements on the next day. This is the sufficient explanation for delay in lodging the FIR. Moreover, it is now well settled that the delay in lodging the FIR is not fatal to the prosecution nor promptness in lodging the same can be gurantee of the truth of the facts noted therein. When there is delay, it becomes the onerous duty of the Court to scrutinise the statement of the prosecution witness with much care and caution. If after closure scrutiny the statements are found trustworthy and reliable, this delay pales into insignificance. The statements of the complainant and injured were duly scrutinised by the trial Court and were found to be trustworthy and reliable. The appreciation and re-appraisal of the evidence is not permissible while exercising the revisional jurisdiction unless it is shown that the findings recorded by the trial Court are perverse or are based on no evidence. It is not the case in the present case.

It is the case of the prosecution itself that there was long standing litigation between the parties and it was the motive on the part of the accused to cause injuries to the complainant and his brother. The motive alone cannot be sole criteria for determining the guilt or innocence of the accused. This motive and delay in lodging the FIR cannot be made a ground for disbelieving the complainant and the injured witness in view of

the flawless and trustworthy statements made by them before the trial Court.

No ground is made out for interfering in the conviction so recorded by the trial Court and if held by the appellate Court.

It is not the case where the accused were entitled to the benefit of probation under Section 360 IPC as they were convicted for the offence under Section 326, which is punishable with imprisonment for life. Therefore, the trial Court or the appellate Court were not required to record special reasons under Section 361 Cr.P.C for not granting that benefit. No doubt the grievous injury was found on the non-vital part on the person of the complainant, but the other injuries were found on the forehead, which is a vital part of the body. Keeping in view the nature of those injuries also, it can easily be said that it is not a case where the accused are entitled to the benefit of probation. They were awarded sentence of two years under Section 326 IPC, which was reduced by the appellate Court to one and a half year. Keeping in view the protracted trial, which they had been facing for all these years, this sentence of imprisonment is further reduced to one year.

This revision petition is disposed of with the said modification. The accused be taken into custody for undergoing the sentence so imposed upon them.

Records be returned forthwith.

February 3, 2011 (Gurdev Singh)
tripti Judge